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March 27, 2017

Via ECF

Honorable Raymond J. Dearie
Senior United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *United States v. Gregorio Gigliotti*
Docket No. 15 Cr. 204 (RJD)

Dear Judge Dearie:

This letter is submitted for Your Honor's consideration in the sentencing of Gregorio Gigliotti. After reviewing the facts set forth below, and the letters drafted on his behalf,[1] it is requested that the Court fashion a fair and just sentence that complies with Title 18 U.S.C. §3553(a). Sentencing is set for April 20, 2017.

I. Facts of the Case

Gregorio Gigliotti was arrested in the Eastern District of New York on March 11, 2015. He has been in custody since that date.

Mr. Gigliotti is named in an eight count indictment charging him with conspiracy to import cocaine, the importation of cocaine, conspiracy to possess cocaine with the intent to distribute it, attempted possession of cocaine, possession of firearms in furtherance of the cocaine conspiracy, and possession of a defaced firearm. He is charged in the indictment along with his eldest son Angelo Gigliotti and his wife Eleonora Gigliotti.

After a two week trial, on July 22, 2016, Mr. Gigliotti was convicted on all counts.

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[1] These letters will be submitted under separate over.

The government advanced at trial that Mr. Gigliotti was importing cocaine from Costa Rica in containers that were bound for his company Fresh Farm Produce in New York. Two seizures were made as part of this investigation. A seizure of 40 kilograms of cocaine was made on October 6, 2014. A second seizure of 15 kilograms of cocaine was made on December 22, 2014.

A search was also conducted at Mr. Gigliotti's restaurant, Cucino Amodo Mio. This search resulted in the seizure of several weapons among other items. These weapons are the subject of Counts Six and Seven of the indictment.

Mr. Gigliotti faces a ten-year mandatory minimum sentence on the narcotics counts and a consecutive five-year mandatory minimum sentence on Count Six, the firearms count.

On October 26, 2016, the defense filed post trial submissions. These motions remain pending.

II. Objections to the Presentence Report

Mr. Gigliotti objects to Paragraphs 10 and 11 of the Report as being wholly irrelevant to the offense of conviction. We ask that these Paragraphs be stricken from the Report.

Mr. Gigliotti objects to Paragraphs 12-14 of the Report as being irrelevant, uncharged conduct that is outside the scope of Counts of conviction. We ask that these Paragraphs be stricken from the Report. If these Paragraphs remain in the Report we ask for a hearing to determine the veracity of the allegations.

Although it has no bearing on his ultimate Guideline calculation, Mr. Gigliotti objects to the conclusion that he is responsible for 120 kilograms of cocaine. The proper weight is 55 kilograms of cocaine. The Probation Department's unsupported estimate of prior shipments is based solely on guesswork. We ask that Paragraphs 21, 22 and 23 be adjusted accordingly.

III. Application of the United States Sentencing Guidelines

The Sentencing Guidelines, because of their approach, tend to place great weight on supposedly measurable quantities, such as the weight of drugs in narcotics cases or the amount of financial loss in fraud cases, without explaining why it is appropriate to accord such weight to these factors.

Under § 2D1.1(c)(3) of the Guidelines, Gregorio Gigliotti starts with a base offense level of 34. Thereafter, Mr. Gigliotti's managerial role within the organization results in four points being added to his offense level. U.S.S.G. §3B1.1(a). Another two points are added as Mr. Gigliotti was involved in the direct importation of narcotics. U.S.S.G. 2D1.1(b)(15)(C). The result is an adjusted offense level of 40. The Presentence Report yields a range of incarceration that can only be described as unduly harsh and excessive in this case: 292 to 365 months on the drug counts and a consecutive term of 60 months for Count Six.

Thus, the weight of the drugs accounts for more than fifty percent of the total offense level and thus more than fifty percent of the advisory sentence range. A sentence that is so heavily weighted in favor of one factor would necessarily result in an unreasonable reliance on one §3553 factor over another. The result would be a skewed sentence for which the Guidelines are often times criticized.

Imposition of a sentence within the range found by the Probation Department would lead, even at the lowest end, to a sentence of nearly thirty years, the functional equivalent of life imprisonment. This would be a truly draconian sentence under the circumstances. Instead, the Court should fashion a sentence that, while taking the Guidelines into consideration, focuses more on the statutory factors set forth in 18 U.S.C. § 3553(a), as mandated by the Supreme Court.

IV. Mr. Gigliotti's Personal Background

Gregorio Gigliotti is described as a dedicated hard-working individual. At age sixty, Gregorio Gigliotti has had a successful life in many ways. He has been married to his wife Eleonora since 1979. Together they have raised three sons. All hard-working family men. He also has two young grandchildren.

Mr. Gigliotti also shares a very close relationship with his parents, his two brothers and their families. His brother Mario Gigliotti described Mr. Gigliotti as a "family oriented, hard-working individual." He further explained that Mr. Gigliotti was always the one to gather the family for holiday celebrations and was always making parties for everyone in the family. (PSR ¶64)

Mr. Gigliotti came to this country from Italy in 1973 with his mother. They resided with Mr. Gigliotti's maternal uncle. A year later Mr. Gigliotti's father and two brothers arrived. Since that time the family has resided primarily in the Corona section of Queens, New York.

Mr. Gigliotti recalls that life in New York when he arrived was very difficult. He was, however, able to find employment in the construction industry. Mr. Gigliotti would go on to become skilled in this field and he owned and operated several construction businesses. He was also a skilled cook. His last business was a restaurant called "Cucino a Modo Mio" which translates to "I cook it my way."

In recent years, Mr. Gigliotti's health has been on the decline. In 2009, Mr. Gigliotti underwent spinal surgery. In February of 2010, at the age of 53, Mr. Gigliotti suffered a stroke which required six months of rehabilitation. In August of 2010, he suffered a heart attack. In July of 2013, he underwent an angioplasty for recurrent chest pain. On June 1, 2015, while in custody, Mr. Gigliotti suffered a mini-stroke. More recently in February of 2017, Mr. Gigliotti was suffering from chest pain and was taken for an evaluation and a stress test. Mr. Gigliotti was unable to complete the stress test due to shortness of breath.

In addition to these episodes, Mr. Gigliotti suffers from hypertension, high cholesterol and diabetes. These ailments require a regiment of ten different medications per day. These major medical issues over the last few years, coupled with chronic health ailments, are clear indications that his health is rapidly on the decline.

While Gregorio Gigliotti did achieve some financial success, all of his assets are now gone. What remains is a trail of debt and a lengthy federal sentence. No matter what sentence is imposed, it will be substantial and this will be a sad chapter for the entire Gigliotti family.

V. Legal Argument

Section 3553(a) of Title 18 provides that "[t]he court shall in every case impose a sentence sufficient, but not greater than necessary to comply with the purposes set out in paragraph (2) of this subsection." This "parsimony clause" applies at every federal sentencing "except as otherwise specifically provided." *Id.* Indeed, the command of the parsimony clause defines the Court's "overarching duty." *Pepper v. United States*, 131 S. Ct. 1229, 1243 (2011).

Among the factors to be considered under § 3553(a) are (1) the nature and circumstances of the offense, (2) the history and characteristics of the defendant, and (3) "the need for the sentence imposed—(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; [and] (C) to protect the public from future crimes of the defendant." 18 U.S.C. § 3553(a).

As the Supreme Court reaffirmed in *Pepper*, the sentencing judge is to "consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue." 131 S. Ct. at 1240 (quoting *Koon v. United States*, 518 U.S. 81, 113 (1996)). While the Guidelines are the "starting point and the initial benchmark," the Court "may not presume that the Guidelines range is reasonable." *Gall v. United States*, 128 U.S. 586, 596-97 (2007). The result is that "[a] sentencing judge has very wide latitude to decide the proper degree of punishment for an individual offender and a particular crime." *United States v. Cavera*, 550 F.3d 180, 188 (2d Cir. 2008).

In this case, for several reasons, the Court is vested with broad authority to sentence Mr. Gigliotti to a non-Guidelines sentence, thereby complying with the purposes of sentencing, without unduly punishing the defendant in a manner inconsistent with the statutory scheme.

The Guideline range of incarceration called for in the Presentence Report is 292-365 months. Count Six carries a consecutive term of 60 months. Given Mr. Gigliotti's age, imposition of such a term would surely amount to a life sentence. Simply stated, the facts of the case do not call for such a sentence. Rather, the defense asserts that the mandatory minimum sentence required by law is appropriate. Imposition of a greater sentence under the facts of this case would violate the statutory mandate that courts should impose a sentence "sufficient, but not greater than necessary, to ... provide just punishment." 18 U.S.C. § 3553(a).

VI. Conclusion

The Court should impose a sentence that is "sufficient, but not greater than necessary" to provide "just punishment", "adequate deterrence", "protect the public" and "provide the defendant with needed educational or vocational training... in the most effective manner." 18 U.S.C. § 3553(a) Based upon all of the facts set forth above including the nature and circumstances of the offense, and Mr. Gigliotti's age and health issues, it is respectfully suggested that the mandatory minimum sentence is sufficient to satisfy the sentencing objectives outlined in 18 U.S.C. §3553(a).

I thank Your Honor for his consideration in this matter.

Respectfully submitted,

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Counsel for the Defendant
Gregorio Gigliotti

All Parties - Via ECF